IN THE

Supreme Court of the United States.

TERM No. 266.

ESTHER S. BUCHANAN, Individually, and as Administratrix of WILLIAM B. BUCHANAN, Deceased, and WILSON CARY BUCHAHAN,
Plaintiffs in Error.

vs.

LAURA PATTERSON ET AL,
Defendants in Error.

In Error to the Court of Appeals of Maryland.

Brief on Behalf of Plaintiffs in Error.

STATEMENT OF CASE.

The decree which is the subject of the writ of error in this case was passed by the Court of Appeals of Maryland, the highest Court of that State, January 30, 1902, is set out on page 117 of the Record, and was a mere affirmance of the decree of the Circuit Court No. 2 of Baltimore City, dated June 26, 1901, and set out in the Record on page 108. That

latter decree states, that it is in conformity with the opinion of the Court of Appeals, dated February 28, 1901, which had reversed in part and affirmed in part a previous decree of the said Circuit Court, dated June 28, 1900, which previous decree of June 28, 1900, is to be found on page 91 of the Record. The opinion of the Court of Appeals, reversing in part the decree of June 28, 1900, appears in the Record, pages 97 to 103 (reported 92 Md. 334), and the opinion of the Court of Appeals affirming the decree here appealed from, is found on pages 113 to 117 of the Record, (reported in 94 Md. 534.)

The first decree of June 28, 1900, which was affirmed in part and reversed in part by the decree of the Court of Appeals of February 28, 1901, decided that the fund in this cause should "be divided into three equal parts, and that one of said three equal parts of said fund be distributed among the next of kin of each of the partners of the firm of S. Smith & Buchanan, to wit., of Samuel Smith, deceased, James A. Buchanan, deceased, and William B. Buchanan, deceased, in being on the 3d day of March, 1899, *per stirpes* and not *per capita*, treating the said Samuel Smith, James A. Buchanan and William B. Buchanan, respectively, as the original *stirps*, according to the laws of the State of Maryland and the statutes of this State in such cases made and provided." (See Record, page 91.)

This fund is the net amount of two French Spoliation Awards paid Esther S. Buchanan, administratrix of William B. Buchanan, surviving partner of the firm of S. Smith & Buchanan, by virtue and in pursuance of two Acts of Congress of the United States, approved January 20, 1885, and March 3, 1899, respectively, and certain decisions, findings and certificates of the Court of Claims of the United States, made under the terms of said Acts, in the two cases of the ship "Patapsco," Wm. Hill, Master, No. 2011, and of the ship "Jane," John Wallace, Master, No. 301, then pending in said Court of Claims.

This decree of June 28, 1900, was by the first decree of the Court of Appeals of Maryland, above referred to, "affirmed as

to the rule of distribution adopted," and reversed in so far as it directed the fund to be divided into three equal parts, and directed one of those parts to be distributed among the descendants of William B. Buchanan; the first decree of the Court of Appeals directing the entry by the Court below of a new decree distributing this fund among the descendants of Samuel Smith and James A. Buchanan only.

The decree of the Circuit Court No. 2 of Baltimore City, of June 26, 1901, affirmed by the decree of the Court of Appeals of date January 30, 1902, here appealed from, ordered that the "said fund in the hands of the plaintiff be divided into two equal parts, one whereof should be distributed among the descendants living at the time of the passage of the Act of Congress, etc., etc., known as the Bowman Act, approved March 3, 1899, of Samuel Smith, deceased, who was formerly a partner in the firm of S. Smith & Buchanan, etc., etc., and the other of said two equal parts of said fund shall be distributed among the descendants, living at the time of the passage of the said Act of Congress, of James A. Buchanan, deceased, who, together with the said Samuel Smith, composed the firm of S. Smith & Buchanan," etc., etc., and "it is further adjudged and decreed that William B. Buchanan, not having been one of the original sufferers, his next of kin, as such, are not entitled to share in the distribution." (See Record, page 108.)

In a word, the State Court undertook to construe the Acts of Congress in question and the effect of these certificates of the Court of Claims made pursuant to the said Acts, and the error charged is, that by this construction it took away from Esther S. Buchanan, administratrix, and from Esther S. Buchanan and Wilson C. Buchanan, as next of kin of William B. Buchanan, surviving partner in the firm of S. Smith & Buchanan, that partner's share in the awards.

This share, as had been decided by the lower State Court in its decree of June 28, 1900, which considered itself bound by the findings of the Court of Claims, was one equal third part. But the Court of Appeals of Maryland, in the decree appealed

from, decided that the Court of Claims of the United States made a mistake in its findings and awards, and that the said William B. Buchanan was not a partner in the said firm of S. Smith & Buchanan, the original sufferer of the losses in question, and that the Acts of Congress which gave his personal representative the awards, as such partner in such firm, should be so read and construed, as to give his representative for him and his next of kin, no share in such awards whatsoever, but that the whole award should be paid to the next of kin of the members of another firm, namely, a firm composed of Samuel Smith and James A. Buchanan, of which he was not a member. In a word, the State Court of Maryland said, that, although the Court of Claims has decided that, a firm, consisting of Samuel Smith, James A. Buchanan and William B. Buchanan, was the original sufferer of these losses, and entitled to the sum awarded, and Congress has recognized that finding, and ordered the Secretary of the Treasury to pay the sum to the administratrix of the surviving partner of that firm, and none other, which payment has been made by said Secretary in accordance therewith, yet we will, and do, find, upon a review of the evidence in that cause, that the original sufferer was another firm, consisting of Samuel Smith and James A. Buchanan, only, and we do therefore adjudge, that it be transferred to the representatives and next of kin of that other firm, from the representative of the firm to whom the Secretary of the Treasury paid the award by virtue of the findings of the Court of Claims and by the terms of the Act of Congress and upon authority of the Certificates of the Court of Claims.

The proceedings in the Court below from which the foregoing statement is briefed, may be catalogued as follows:

Bill of Complaint.

The bill of complaint was filed by Esther S. Buchanan, as an individual, and as administratrix of the estate of William B. Buchanan, deceased, surviving partner of S. Smith & Buchanan, and Esther S. Buchanan, administratrix *d. b. n.*,

e. t. a of James A. Buchanan, under the rule in Maryland, which requires that in whatever several capacities a party may appear in a cause, he must appear in all of them on one side of the record or the other, either as plaintiff or as defendant. The bill states (page 12 of Record, at bottom) that "your oratrix is advised that she holds said fund for the benefit of, and for distribution among, not only the next of kin of her own decedent, the said William B. Buchanan, but also the next of kin of the other partners of the firm of S. Smith & Buchanan, to wit, Samuel Smith and James A. Buchanan, in the proportions and according to the laws of distribution which your Honor may hold to be proper in this cause." The prayer is, "that this Honorable Court will assume jurisdiction of the fund in the hands of your oratrix, as administratrix, as herein set forth, and that it will direct and supervise the distribution of the same among the parties, whom the Court may find to be entitled to participate therein, according to the proportion and rule which this Court may declare to govern the same," etc.

NOTE.—It should be noted here, that the only legal effect and purpose for which the jurisdiction of the said Chancery Court of the State of Maryland was, or could be, asked, or invoked, according to the language of the Supreme Court in the case of Blagge vs. Balch, 162 U. S. 461, hereinafter cited, was the ascertainment under the Statutes of Distribution of the State of Maryland, of the next of kin of these several partners whom the Court of Claims and Congress had recognized as the original sufferers, and not the rehearing of the case and the determination by the Probate or Chancery Court of the State of Maryland, of the identity of the original sufferers. This was recognized by the decree of the Court dated June 28, 1900 (Record, page 91), passed by Judge Stockbridge, in which he distributes the award to the next of kin of each of the said three partners, "according to the laws of the State of Maryland and the statutes of this State in such cases made and provided," which decree the plaintiffs in error here claim was the right decree, and free from the error contained in the decree appealed from.

ANSWERS OF DEFENDANTS IN ERROR TO BILL OF COMPLAINT.

The answers of the defendants to that bill, who are the defendants in error contesting on this appeal, appear on pages 20 to 23 of the Record, and all such answers admit with particularity, that the firm on whose behalf the award was made, was composed of Samuel Smith and James A. Buchanan and *William B. Buchanan*, as copartners, but the next of kin of Samuel Smith averred that "the said Samuel Smith was the owner of a full one-half interest in the said firm, and the other two copartners, to wit., James A. Buchanan and William B. Buchanan, together owned the other one-half interest therein." (See Record, page 22.) These answers were, however, subsequently withdrawn, and amended answers filed by the heirs of Samuel Smith, and the claim was then made for the first time, "that the firm of Smith & Buchanan, by whom the said losses were originally sustained, consisted at the time of said losses, of two members, and no more, namely, Samuel Smith and James A. Buchanan, each of whom owned a one-half interest in said firm, that William B. Buchanan, son of James A. Buchanan, was not at that time a member of said firm, being in fact an infant of tender years, to wit., about three years of age, and that he was not admitted in the firm until long afterward, to wit., in the year 1816, etc., and respondents do not admit that the next of kin of William B. Buchanan are, as such, entitled to any share or part in said fund." (See Record, page 29.)

EVIDENCE BEFORE STATE COURT AND BEFORE COURT OF CLAIMS.

The testimony of the witnesses produced before the State Court (Record, pages 35 to 45), does little more than identify the descendants from the several members of the partnership But it is to be observed that Miss Buchanan testifies flatly to the fact that the firm of S. Smith & Buchanan, whom she represented in the Court of Claims, and in whose behalf she received the awards, consisted of her father, William B. Buchanan, her grandfather, James A. Buchanan, and Samuel Smith, and that her father survived them all. (Rec., page 36.) She filed copies

of the letters of administration granted her upon the estate of her father, William B. Buchanan, the surviving partner, and also letters granted to Col. Robert Carter Smith, the administrator *d. b. n., c. t. a.* of Samuel Smith. Robert Carter Smith, himself, the administrator *d. b. n., c. t. a.* of Samuel Smith, the ancestor from whom all the contesting defendants in error here claim as next of kin, testified before the State Court, as he also appeared and testified before the Court of Claims, where his testimony was as follows: "That he remembers his grandfather well, being about sixteen years old when he died, and that he has heard him repeatedly speak of the firm of S. Smith & Buchanan, and repeatedly say that it consisted of himself, Samuel Smith, James A. Buchanan and William B. Buchanan, the exact date when the last named became a member of the firm he does not know." He further said "that he has over and over again heard his grandfather, Samuel Smith, say that his firm of S. Smith & Buchanan, and he himself, individually, had large claims against the United States Government on account of French Spoliations." (Record, page 53.)

So also before the State Court, none of the descendants or representatives of Samuel Smith makes any statement going to show that the partners composing the firm, were any other than the three partners described by the Court of Claims, or that there was any inequality of shares between the three partners.

All the other evidence that was produced before the State Court, consisted of copies of the proceedings and evidence that were on file in the Court of Claims, or referred to therein from the open records of other Courts, when the claim of William B. Buchanan, surviving member of the firm of S. Smith & Buchanan, was filed by Esther S. Buchanan, his administratrix.

The estate and claims of Jas. A. Buchanan were then represented in the Court of Claims and before Congress by his administrator *d. b. n., c. t. a.*, George W. Brown, to whom were made, by the Court and Congress, the awards coming to his

testator. One of the counsel for Samuel Smith's next of kin, the defendants in error in this Court, with other counsel particularly designated by that interest, viz., Mr. John E. Semmes, represented Samuel Smith's interests or claims, and testified on the subject. (Record, pages 27, 49, 54, 57, 89 and 95.) And this Court is particularly requested to note the agreement between counsel on page 76 of the Record, by which it is "agreed that each and all of the afore-said instruments (being Complainants' Exhibits Examiner, etc., set out in the Record, pages 48 to 76), were filed and used in evidence in the cause of Esther S. Buchanan, administratrix of William B. Buchanan, vs. United States, late pending in the Court of Claims of the United States, and known as French Spoliations Claims Nos. 381 and 2011," because it appears plainly from certain exhibits, especially Exhibit D. D. Memorial of Jonathan Meredith and Thomas Ellicott, that the facts of the age of William B. Buchanan, and of his joining the firm formally at a later date than the period of the losses, and that the members of the firm in 1798 were Samuel Smith and James A. Buchanan, were fully known to the Court of Claims and to all the parties to the claims then before it, being the personal representatives of all three partners and the actual representatives of both plaintiffs and defendants in error to these proceedings, and to note that the Court of Claims considered and decided, notwithstanding, that the firm justly entitled to these awards, as the original sufferers of the losses, was the firm consisting of Samuel Smith and James A. Buchanan and William B. Buchanan, of which William B. Buchanan was the surviving partner.

Acts of Congress Referring Claimants to Court of Claims and Proceedings of Court of Claims, Including Finding of Facts and Conclusions of Law of Said Court.

First in order, chronologically, comes the Act of Congress of January 20, 1885, entitled "An Act to ascertain the claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801," which is the origin of the juris-

diction in this case. This Act recites: "That such citizens of the United States, or their legal representatives as have valid claims of indemnity upon the French Government arising out of illegal capture, etc., may apply by petition to the Court of Claims within two years from the passage of this Act," etc., etc.

"Sec. 2. That the Court is hereby authorized to make all needful rules and regulations, etc., etc., for executing the provisions hereof."

"Sec. 3. That the Court shall examine and determine the validity and amount of all claims included within the description above mentioned, together *with their present ownership*, and, if by assignee, the date of assignment, with the consideration paid therefor; provided, that in the course of their proceedings, they shall receive all suitable testimony on oath or affirmation, and all other proper evidence, historic and documentary, concerning the same," etc., etc., "and shall report all conclusions of fact and law as in their judgment may affect the liability of the United States therefor."

"Sec. 6. That on the first Monday of December in each year the Court shall report to Congress, for final action, the facts found by it, and its conclusions of all cases which it has disposed of and not previously reported. Such findings and report of the Court, shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress, etc., and nothing in this Act shall be construed as committing the United States to the payment of such claims." (See Record, pages 46, 47.)

Note here, that the findings and reports are to go to Congress, but the question arises, and is easily answered, as to whether such findings are advisory after the report has been accepted by Congress, adopted in terms, and an award made strictly in accordance therewith.

Petition of Claimant.

The petition of Esther S. Buchanan, filed in the Court of Claims, in case No. 381, in respect to ship "Jane," appears on

page 48 of the Record, and in case No. 2011, with respect to the cargo of the ship "Patapsco," on pages 55-57 of the Record. Both these petitions are signed by counsel, who appear here for the next of kin of Samuel Smith, and who then represented these defendants in error at least as much as they did the plaintiffs in error. Both of them claimed the award and the fund in the right of the administratrix of William B. Buchanan, survivor of the firm of S. Smith & Buchanan. The exhibits and testimony before referred to, were all laid before the Court of Claims, including particularly the affidavit of Robert Carter Smith, the administrator *d. b. n., c. t. a.* of Samuel Smith, above referred to, set out on pages 52 and 53 of Record, as to who constituted the firm of S. Smith & Buchanan.

FINDINGS OF COURT OF CLAIMS IN CASE 2011.

Note particularly on page 78.

IV.

"John Donnell and the firm of S. Smith & Buchanan owned jointly 41 bales of cotton shipped on said Patapsco. John Donnell was a citizen of the United States. *Samuel Smith, James A. Buchanan and William B. Buchanan, citizens of the United States, formed the said firm of S. Smith & Buchanan.* The said cotton was worth the sum of $4,100, of which said Donnell and *said* firm, each owned half."

V.

"The *said* firm of S. Smith & Buchanan and John Smith, Jr., a citizen of the United States, owned jointly, one-half by said firm and one-half by said John Smith, Jr., 70 hogsheads and 1233 sacks of coffee shipped on said Patapsco. Said coffee was worth the sum of $46,012."

X.

"November 9, 1820, *said Samuel Smith, James A. Buchanan and William B. Buchanan*, copartners, and trading as herein-

before set forth, as copartners under the firm name of S. Smith & Buchanan, assigned in trust to Thomas Ellicott and Jonathan Meredith, as trustees, all their real and personal estate belonging to them in the said copartnership capacity of S. Smith and Buchanan, etc., etc. The *claimants in their representative capacities are the owners of said claims which have never been assigned except as aforesaid.* (Record, pages 78 and 79.)

"*Conclusions of Law.*

The Court decides, as conclusions of law, etc., etc., that the claimants are entitled to the following sums from the United States:

"On the ship 'Patapsco,' William Hill, master, namely:

"George W. Brown, administrator of the estate of James A. Buchanan, deceased, - - - - - $4,609.99,
(being his share of vessel and freight.

"Robert Carter Smith, administrator *de bonis non, cum testa mento annexo* of the estate of Samuel Smith, deceased, - - - - - - - - $4,609 99,
(being his share of vessel and freight.)

"Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased, - - $25,056 00
(The value of the cargo (shipped) by said firm.)

"On the ship 'Jane,' John Wallace, master, namely:
Esther S. Buchanan, administratrix, representing Smith & Buchanan - - - - - - - $11,660 21

"Robert Carter Smith, administrator, representing Samuel Smith - - - - - - - - $6,738 21

Filed April 22, 1899.

By the Court."

(See Record, page 80.)

"*Conclusion of Facts in 381, Etc.*"

III.

"The cargo consisted of merchandise belonging to the firm of S. Smith & Buchanan, and to Samuel Smith individually, and one Edmund Suise. *Samuel Smith* and *Smith & Buchanan* were merchants doing business in Baltimore, etc." (See Record, page 81.)

V.

"In case No. 381, the firm of S. Smith & Buchanan were owners of one-half of the vessel, and seven-sixteenths of the cargo, etc.

"The losses of Smith and Buchanan by reason of the capture of the 'Jane' and her cargo, for which they are entitled to indemnity, are as follows, etc., etc.

Leaving amount of losses . . . $11,660.22."
(See Record, page 82.)

X.

November 9, 1820, said *Samuel Smith, James A. Buchanan,* and *William B. Buchanan,* copartners, *and trading as hereinbefore set forth as copartners under the firm name of S. Smith & Buchanan,* assigned in trust, etc., etc., all their real and personal estate belonging to them in said copartnership capacity of S. Smith & Buchanan, etc. (See Record, page 83.)

XI.

"In case No. 381, *William B. Buchanan* was the surviving partner of the firm *of S. Smith & Buchanan.* The *claimant Esther S. Buchanan has produced letters of administration for the estate of William B. Buchanan, deceased, and has otherwise proved to the satisfaction of the Court that the person of whose estate she is administratrix, was the same person who was* AN OWNER *of the 'Jane' and her cargo in 1798, and a citizen of the United States.*"
(See Record, page 83.)

"*Conclusion of Law.*"

The Court decides as conclusions of law, etc,, etc., that the claimants are entitled to the following sums from the United States.

"Esther S. Buchanan, administratrix, representating S. Smith & Buchanan - - $11,660 21
Robert Carter Smith, administrator, representing Samuel Smith - - - 6,738 21
Filed December 7, 1891. By the Court."

(See Record, pages 80 to 84.

The Court of Claims repeatedly refers to the Registers of the Ships "Jane" and "Patapsco" in the name of Samuel Smith and James A. Buchanan, to the deed of trust above mentioned made by the insolvent firm of Smith & Buchanan, to Ellicott and Meredith, and to the memorial of said trustees filed with the Commissioners of the U. S. and his Catholic Majesty, (Record, pages 61 to 73), all of which shows that the Court of Claims fully and duly considered the facts stated in those papers and the insolvent proceedings of James A. Buchanan in the Baltimore County Court affecting said firm, including the affidavit of James A. Buchanan on page 85 of Record, which were of course as open and well known to all parties in interest then as now.

The foregoing reports of the Court of Claims in the several cases, made to Congress in accordance with the terms of the Act, are each made part of the other. The Court found distinctly in each case, that Esther S. Buchanan, administratrix of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, was entitled to the awards above set out. The very words of the finding on page 78 of Record are, "*Samuel Smith, James A. Buchanan and William B. Buchanan*, citizens of the United States, *formed the said firm of S. Smith & Buchanan.*" The very words of the finding XI, on page 83 are, "that the person of whose estate she is administratrix was the same person who was an owner of the "Jane "and her cargo in 1798."

ACT OF APPROPRIATION AND FINAL CERTIFICATES OF COURT OF CLAIMS IN ACCORDANCE THEREWITH.

Up to this point the proceedings in the Court of Claims were, as the Act declares, merely advisory and for the information

of Congress, and not binding on either party. But as we shall see later, the Court of Claims in this same Buchanan case, (24 Court of Claims, 81, cited at length in Blagge vs. Balch, 162 U. S., page 455), and in the Van Wagenen case, (25 Court of Claims, 110), cited and adopted in Blagge vs. Balch, has stated that "it has required an established evidence of ownership, and has allowed only the administrator of the survivor to prosecute the claims" and "that it has reported to Congress facts which may establish an equitable ownership in an adverse party." In a word, as in the quotation in the Buchanan case, "it has done everything but place itself in the position of a Court of Probate," of which, as it says, there are thirty-eight, more or less, all governed by different statues. Therefore it was for Congress with these facts and reports before it, with the evidence of ownership, whether legal or equitable, and the advisory adjudication of the Court thereupon, to adopt such adjudication and make its gift accordingly. Congress did this in its Act of Appropriation, March 3, 1899. We quote the following portions of that Act: (See Record page 95).

"To pay the findings of the Court of Claims on the following claims, etc., etc., provided, that in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury *that the personal representatives on whose behalf the award is made represent the next of kin, etc., etc.*"

"Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased, the value of the cargo shipped by said firm - -	$25,056.00
"On the ship 'Jane,' John Wallace, Master, viz: Esther S. Buchanan, administratrix, representing S. Smith & Buchanan - -	$11,660.21."

Observe that Robert Carter Smith, administrator of Samuel Smith gets two awards adjacent to the two given the

administratrix of S. Smith & Buchanan, and George W. Brown, administrator of James A. Buchanan, still another. So that it is plain that both the Court and Congress examined into all the rights and claims of Robert Carter Smith, representing the next of kin of Samuel Smith, but in the partnership estate gave him only such share as he had in common with the next of kin of this surviving partner. In a word, Congress said to the next of kin of Samuel Smith: "We give you your ancestor's individual award, but you can only get your ancestor's partnership award upon the terms of receiving it through the representative of the surviving partner, William B. Buchanan, and recognizing his next of kin as entitled to a partner's share."

But it should be carefully observed that Congress next and now requires a certificate or judgment from the Court of Claims, which is never advisory, but final, as is defined in the language of this Court in the case of Gilliat, 164 U. S., 42. The language in the statute is: "That the awards in the case of the individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made, represent the next of kin, etc., etc." (See Record, page 95.)

FINAL CERTIFICATES OF COURT OF CLAIMS TO SECRETARY OF TREASURY.

The application for these certificates is noteworthy, since it shows that again one of the counsel, now as then representing the defendants in error, viz., the next of kin of Samuel Smith, appeared as counsel for the personal representatives of all three members of the firm. We copy the application in case No. 2011.

"Court of Claims, No. 2011, French Spoliation Cases.

Vessel, ship Patapsco.

Master, William Hill.

"In the matter of the application of Frank P. Clark, Esq., attorney of record for Esther S. Buchanan, administratrix of

the estate of William B. Buchanan, deceased, for a certificate of the Court under the Act of March 3, 1899.

"The defendants having been heard thereon, the Court orders that the following certificate be issued to the Secretary of the Treasury."

These certificates in the cases Nos. 381 and 2011, appear on pages 58 and 59 of Record. The certificate in the first case is as follows:

To the Secretary of the Treasury:

"The Court of Claims hereby certifies *that it appears by evidence on file in the above-entitled case* that *said* Esther S. Buchanan on whose behalf an appropriation or award was made by the Act of March 3, 1899, etc., etc., for the sum of $11,660.21, represents the next of kin of William B. Buchanan, the surviving member of the firm of Samuel Smith & Buchanan, deceased, the original owner of the claim upon which said award was made."

"And the Court further certifies that it appears on the record of said case that at the time the award of this Court was made the said claim was not held by assignment or owned by an insurance company."

In No. 2011: "The Court of Claims hereby certifies that it appears by evidence on file in the above-entitled case that *said* Esther S. Buchanan, on whose behalf an appropriation or award was made by Act of March 3, 1899, for the sum of $25,056, represents the next of kin of William B. Buchanan, surv. part., etc., deceased, the original owner of the claim upon which said award was made."

Upon these certificates the amounts of the two awards were paid by the Secretary of the Treasury to the plaintiff in error, Esther S. Buchanan, administratrix of William B. Buchanan.

After the statement of an expense account in the Orphans' Court of Baltimore City, wherein she had been appointed as such administratrix, the bill of complaint in this proceeding was filed in the Circuit Court No. 2 of Baltimore City, and the proceedings above detailed were thereupon had, and the

final decree was passed denying all right of participation in the fund, to the next of kin of William B. Buchanan, and this decree was affirmed by the Court of Appeals of Maryland, the State Court of last resort in which a decision of the matter now in issue could be had.

NOTE.—Now it is freely admitted on the part of the next of kin of William B. Buchanan that these certificates were intended to establish the fact required by the Act that the administratrix of the surviving partner represented the next of kin of the other partners as well as the next of kin of her own intestate, otherwise, according to the custom of the Court and the requirements of the Act, the shares of the other partners would not have been adjudicated to her. But whatever possible breadth of intendment can be given to this judgment and certificate of the Court, this much is clear that it was ordered to be paid to her because she represented the next of kin of William B. Buchanan, who is expressly described as an original sufferer (whatever were and whoever were the other partners), and for their benefit to the extent of his share. The said administratrix, therefore, would certainly be absolutely unfaithful to her trust, if she conceded the share of her intestate to any but his next of kin, and it does seem rudimentary to say that the next of kin of the two other partners, whose personal representatives were parties to this proceeding throughout and obtained these appropriations from Congress and these certificates or judgments from the Court that Congress authorized to give them, would be guilty of bad faith, if they attempted in any other Court or place to deny the share in the partnership to William B. Buchanan and his next of kin which they had freely alleged or allowed the Court to find or establish, and without which finding and adjudication Congress would not have given anything.

ERRORS IN THE DECREE APPEALED FROM HERE RELIED UPON.

The assignment of errors in the petition of appeal appears on pages 5, 6 and 7 of Record. They are stated as three in number, and that form of statement is hereby adopted, if this Court shall require that the errors complained of should be formally and technically stated. But the error is in fact the single and all embracing one, that, whereas Congress by its Acts referred to, and particularly by its Act approved March 3, 1899,

ratified and adopted the findings and decisions of the Court of Claims, made in pursuance of the terms of the Act of January 20, 1885, in the case of the ship "Patapsco," William Hill, Master, No. 2011, and of the ship "Jane," John Wallace, Master, No. 381, and recognized and designated William B. Buchanan as an original sufferer within the meaning of said Act of Congress, by virtue of his being a partner and the surviving partner of S. Smith & Buchanan, and gave to his personal representative the awards in question for the benefit of his next of kin, and the next of kin of his two partners, and the Court of Claims made the additional final certificate required by the said gift, or appropriation Act, of Congress, and the Secretary of the Treasury, in accordance with such certificate, paid the money to the said Esther S. Buchanan, administratrix, for the benefit of the next of kin of William B. Buchanan, to the full extent of his partnership interest in the firm, nevertheless the highest Court of the State of Maryland has denied and taken away the property and rights of the plaintiffs in error, the next of kin of said William B. Buchanan, vested in them under the aforesaid Act of Congress, in accordance with the findings and certificates of the Court of Claims made in pursuance of such Act, and has given their whole property aforesaid to the next of kin of two partners of a firm, to whom the said Court of Claims and Congress, by the terms of its Acts, had in no way given the same, or recognized, or designated, as in any way entitled to such gift. It is believed that no repetition or variation in form of this statement of the substantial error contained in the decree of the Court of Appeals of Maryland, is required in accordance with the rules of this Court, or for its easier or clearer appreciation of the error. But to enumerate, we repeat that there was error in the decree of the Court of Appeals of Maryland:

1. In deciding that it had power and jurisdiction to review the proceedings of the Court of Claims and its findings and judgments and conclusions in the matter of the two awards, and the proceedings and Acts of Congress making the appropriations in reference thereto, and to decide that the said

Court of Claims was guilty of error and mistake, and that Congress had adopted and enacted such mistake and given the fund to the wrong party or in the wrong capacity, and to decree that it should be paid to the next of kin of the members of a firm other than the firm of which the intestate of the plaintiffs in error was the surviving partner, to whose representative Congress and the Court of Claims had awarded it as aforesaid.

2. In deciding that it had the power, right or jurisdiction to correct the mistake or errors of the Court of Claims in its findings, judgments, certificates or conclusions in the matter of said awards to the plaintiffs in error, if there were any mistake, and to decree such correction.

3. In deciding that it had the power and jurisdiction to correct the mistake, error or defect, if any there were, in the Act of Congress dated March 3, 1899, and in decreeing that the appropriation paid under said Act to the plaintiff in error, Esther S. Buchanan, administratrix of William B. Buchanan, surviving partner of Smith & Buchanan, for the benefit of the next of kin of her intestate, should be paid not in any part to the next of kin of her intestate, but the whole thereof to the next of kin of the members of a firm of which her intestate was not a partner.

THE ARGUMENT.

It is hoped a very brief sketch of the argument will suffice to lay the issue, which is exclusively one of law, before the Court. Perhaps the simplest and fairest way is to commence with the decision of the Court of Appeals of Maryland, and to consider the grounds upon which the erroneous judgment, as claimed, was founded by that Court itself.

I.

THE COURT OF APPEALS OF MARYLAND HOLDS THAT, NOTWITHWITHSTANDING THE FINDINGS AND CERTIFICATES OF THE COURT OF CLAIMS AND THE TERMS OF THE LEGISLATION OF CONGRESS SO DECLARING, DEFENDANTS IN ERROR MAY SHOW IN ITS JURISDICTION THE VERY

OPPOSITE OF THE DECLARATIONS OF THE COURT AND ACT OF CONGRESS, VIZ: THAT WILLIAM B. BUCHANAN WAS NOT A PARTNER OF S. SMITH & BUCHANAN WHEN ITS PROPERTY WAS DESTROYED, AND THAT ANOTHER FIRM THAN THE FIRM OF WHICH HE WAS A MEMBER WERE THE ORIGINAL SUFFERERS AND ENTITLED TO THE AWARD.

It says the Court of Claims made and repeated a mistake, and Congress adopted and enacted that mistake in its gift to these plaintiffs in error, but that it is within its own jurisdiction to correct such mistake. It must be confessed that, if the position of the Court of Appeals of Maryland is fairly stated in above heading, it contains a great deal of novel doctrine, not only without any authority cited in support thereof, but actually contrary to the plain decisions of this Court and generally received rules of law. Let us consider if the above is a fair statement of the opinion and decision of the Maryland Court of Appeals.

That case is reported in 92 Md., page 334, and the opinion is copied in this record, pages 97 to 102. We quote as follows from page 99:

"But it is contended that the judgment and findings of the Court of Claims in connection with the Acts of Congress are conclusive, and that, therefore, all are bound by the decision of that Court, that the plaintiff was, in fact, the administratrix of William B. Buchanan, and that he was the survivor of the firm, and that, therefore, he was one of the original sufferers. We cannot, however, agree with this view. On the contrary it seems to us, from a careful inspection of the record, that the question as to whether the plaintiff was in fact the proper formal party to file the petition in the Court of Claims was never suggested to or considered by that Court."

Let us stop right here and ask this Court to look at what the Court of Claims has said on the subject of the question suggested. We quote from finding of the Court of Claims on page 83 of Record, headed "XI:"

"XI.

"In case No. 381: William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan. The claimant, Esther S. Buchanan, has produced letters of administration for the estate of William B. Buchanan, deceased, and has *otherwise proved to the satisfaction of the Court* that the person of whose estate she is administratrix was the same person who was an owner of the "Jane" and her cargo in 1798 and a citizen of the United States."

In case No. 2011, we quote from page 79, part of finding "IV" and "X" of the Court of Claims.

"IV.

"John Donnell and the firm of S. Smith & Buchanan, owned jointly 41 bales of cotton shipped on said 'Patapsco.' Samuel Smith, James A. Buchanan and William B. Buchanan formed the said firm of Smith & Buchanan."

"X.

"The claimants in their representative capacities are the owners of said claims, which have never been assigned, except as aforesaid."

One of these claimants was Esther S. Buchanan, administratrix of the surviving partner of *said* firm of S. Smith & Buchanan.

We beg the Court to consider the terms of the certificates of the Court of Claims in both cases, under Act of March 3, 1899, already quoted, and appearing on pages 58 and 59 of the Record.

We quote the opinion of the Court of Claims in Buchanan vs. U. S., 24 Ct. of Cl., page 81:

"In cases of partnerships, the Court has required evidence of survivorship, and has allowed only the administrator of the survivor to prosecute the same."

We quote again, the language of the Act July 20, 1885, requiring such finding: "The Court shall examine and deter-

mine the validity and amount of all claims included in the description above mentioned, together with their present ownership." (See Record, page 46.)

Could the Court of Appeals of Maryland be more directly opposed in this statement by the statement of the Court of Claims, whose record it had assumed power to review and correct? But we quote further from the opinion of the Court of Appeals on page 100 of Record:

"But the mistake was in assuming that her intestate was a member of *the firm* as constituted at *the time* of the losses."

That is, the Court of Appeals of Maryland states, that the Court of Claims made a mistake in this conclusion of fact and of law, and then goes on to exercise the power to correct it. Need we do more than ask: if it was a mistake, where is the jurisdiction of the Court of Appeals of Maryland to correct such a mistake? Certainly it need not be emphasized here, that except for the Act of November 20, 1885, and March 3, 1899, there was no Court in the world which had the right to establish this claim against the United States or *the ownership* as between the parties. In fact, there can be no ownership of a gratuity or gift except as it may be recognized, and in accordance with the terms of such recognition, by the Government which proposes to bestow such gratuity. Now whatever was the jurisdiction and function of the Court of law which the Government created and designated to decide these questions, in the first instance advisorily, and in the last instance finally and conclusively, was there any other Court in the wide universe, which had jurisdiction by this Act of Congress, and could any Court gain such jurisdiction except by such Act of Congress? Then, if the jurisdiction, however limited it may be, over this subject matter, was conferred by Congress upon the Court of Claims exclusively, how can any other Court, whether of a State or the United States, obtain or possess jurisdiction to review the findings, conclusions and certificates, advisory or conclusive, of the Court exercising jurisdiction under the Act of Congress? In accordance with the well-

known rule of jurisprudence, such jurisdiction could only be obtained by one Court over the other, by the method of appeal provided by a competent Legislature. If authority were needed, the authority of a case directly in point on the question of the finality of the jurisdiction of the Court of Claims in its last certificate, set out on pages 58 and 59 of Record, to be referred to later, can be used as an excellent illustration.

U. S. vs. Gilliat, 164 U. S. 46.

We cannot here help quoting from the opinion of Judge Wickes in the case of Penniman vs. Hook, et al., in the Circuit Court of Baltimore City, printed as part of this brief.

"There is no suggestion of fraud or misrepresentation in this case. If a mistake was made as alleged, it is an absolutely innocent mistake. For counsel on both sides of this case represented this defendant in the prosecution of the claim before Congress. I have not gone into the question of error in the proceedings at Washington, for assuming it all to be true, we have no power to correct it."

But we quote further from the opinion of the Court of Appeals of Maryland, in the present case:

"Nor does it appear that this mistake was discovered until after the filing of the bill in this case, when it was learned from the testimony of the plaintiff that he was an infant only three years old in 1798; and therefore could not have been a member of the firm of S. Smith & Buchanan when the losses were sustained."

We touch softly on the fact of record that the plaintiff is not a "he" but a "she," and naturally would recoil from testifying that she was an infant three years' old in 1798.

But we desire to call attention to the fact, that the defendants in error filed their answers and went to the proof of the case alleged by them, namely, that the firm entitled to the award, consisted of the three partners, Smith and the two Buchanans, father and son, but that the last-named two had a half interest between them. They failed totally to support

their contention, after proceeding with the taking the testimony, and then withdrew their former answers and filed the amended ones, in which they claimed that William B. Buchanan was not a partner at all. But does not this make unavoidable the conclusion, that these defendants in error were consistent in maintaining, before the Court of Claims by their counsel and the personal representatives of their ancestors, what they maintained in the Maryland Probate or Equity Court up to the moment of filing their amended answers, *i. e.*, that all three partners were entitled to the award as original sufferers, *for the reason that they expected to reduce the shares of the two Buchanans to one-half*, and when they failed to effect this reduction by one method, they attempted to gain it by another, absolutely inconsistent with the findings of law and fact, they had asked and obtained from the Court of Claims? In fact the Court of Appeals of Maryland, otherwhere in its opinion, twice says the findings of the Court of Claims "are due to the mistake made by the plaintiff *and those who conducted the case before the Court of Claims*," and "there is nothing to prevent the Courts of this State from correcting the mistake made by those who instituted the proceedings." Now that the proceedings in the Court of Claims were with the consent and participation of the representatives of the three partners, is thus expressly recognized by the Court of Appeals, and has been shown with particularity. But the defendants in error, both in their answers and amended answers, expressly admitted the allegations of Clause Third of the plaintiff's bill, that "in pursuance of said Act of Congress, and *as administratrix of said William B. Buchanan*, the last surviving member of said firm of S. Smith & Buchanan, your oratrix did present and urge before said Court of Claims, *on behalf of said firm*," and "Congress did award to your oratrix" the claims. "The said firm" is always and ever described in the bill as consisting of the three partners. That is the defendants in error admitted, and the Court of Appeals of Maryland found, that they consented that these claims should be presented and urged *on behalf of that firm and none other.* Now that Congress has

given the award to *that firm*, strictly in accordance with their prayer, claim and consent, they ask the jurisdiction of the Maryland Court to take it from that firm, and grant it to another, on the ground that they made a mistake, which they newly discovered pending proceedings in the Maryland Court.

We will show later what was the probable view of the Court of Claims of the effect of the evidence, which determined it to treat William B. Buchanan as entitled to a partner's interest in these losses and to be regarded as one of the original sufferers. But we are now pointing out the inaccuracy of the Maryland Court of Appeals, when it seems to infer, that the Court of Claims did not have access to the same evidence that itself had. We have mentioned, that the Court of Claims examined and referred in its Findings to the registers of the ships "Jane" and "Patapsco," as being in the names of Samuel Smith and James A. Buchanan only, set out on pages 61 and 63 of the Record. It also referred in its Findings to the Memorial of Ellicott and Meredith, Trustees of Samuel Smith, James A. Buchanan and William B. Buchanan, which alleges the ownership of these claims as in those partners, trading as the firm of S. Smith & Buchanan, but says "that they are credibly informed and do verily believe that the said Samuel Smith and James A. Buchanan composed the *then* mercantile firm of S. Smith & Buchanan, and are citizens of the United States of America, domiciliated at and prior to the year 1798 in the City of Baltimore." (See Record, page 71.) But the said trustees expressly allege, that the property in these claims is in the firm first named, of which William B. Buchanan was a member.

We have shown that Robert Carter Smith, the administrator *d. b. n., c. t. a.* of the testator of the defendants in error, appeared before that Court and made his own particular affidavit (See Record, page 53), that notwithstanding that he does not know the exact date when the last named became a member of the firm, that the firm of S. Smith & Buchanan, the owners of these claims, consisted of Samuel Smith, James A. Buchanan and William B. Buchanan. The representative of these defendants in error, therefore, knowingly waived all question as to

the date when William B. Buchanan joined the firm, and in effect assented that the Court should find the ownership of these claims to be in his firm, and that William B. Buchanan should be given his interest as one of the partners, and his administratrix receive the money to distribute his share of it to his next of kin.

The deposition of James A. Buchanan made before the insolvent Court of Baltimore County in 1821, it is believed, was before the Court of Claims, but it was always known to and within reach of the defendants in error here and the parties to the proceedings in the Court of Claims. (See Record, page 85.) That deposition states that this firm of S. Smith & Buchanan, consisting of the three partners found to be such by the Court of Claims, possessed "these claims on Holland, France and Naples," amounting to $723,850.00. The claims are mentioned again as the property of this firm at the foot of Statement A, (page 87 of Record), as "claims on the French, Dutch and Neapolitan Governments." But in his answer to the 19th question this deponent further stated: "At the commencement of the year 1818 the house of S. Smith & Buchanan was unquestionably solvent, and a conclusive evidence that such was my sincere and undissembled belief, is to be found in this fact, viz: That my son William who enjoyed a competent independent estate of his own, was, on the first day of that year, taken into the house of S. Smith & Buchanan."

He states further, as the Court of Claims found, that after the suspension of S. Smith & Buchanan in the month of May, 1819, it made an assignment of all its effects to Ellicott and Meredith, trustees, which assignment was presented to the Court of Claims and referred to by them, and appears on page 65 of Record, and again treats these claims as the property of the firm of S. Smith & Buchanan, consisting of Samuel Smith, James A. Buchanan and William B. Buchanan. (See 17th Answer of James A. Buchanan, Record, page 87.)

II.

IT IS THEREFORE REASONABLY, IF NOT ABSOLUTELY CERTAIN, THAT THE COURT OF CLAIMS ACCEPTED THE THEORY ASSENTED TO BY THE PERSONAL REPRESENTATIVE OF THE DEFENDANTS IN ERROR, VIZ., THAT IT WAS MERELY EQUITABLE AND JUST, THAT WILLIAM B. BUCHANAN SHOULD BE TREATED AS ONE OF THE ORIGINAL SUFFERERS WHO HAD SHARED THESE LOSSES, BECAUSE OF THE FACT THAT ON HIS ADMISSION INTO THE FIRM, HE WAS SO REGARDED BY THE OTHER PARTNERS, AND LATER BY THEIR ASSIGNEES IN INSOLVENCY, FOR THE REASON THAT HE CONTRIBUTED HIS INDEPENDENT FORTUNE TO THE FIRM AGAINST THE ASSETS OF THE OTHER PARTNERS, INCLUDING THESE CLAIMS, AND BOTH THESE OTHER PARTNERS AND THE CREDITORS GOT THE FULL BENEFIT OF THAT SACRIFICE, HENCE THAT IT WAS MERE EQUITY TO CONCEDE HIM TO BE IN THE POSITION OF AN ORIGINAL OWNER AND SUFFERER.

It is not necessary to argue here whether this was the correct view of the case, but if it appears probable or possible that the Court took this view, and Congress accepted it, and made the gift to William B. Buchanan in accordance with the Court's theory and conclusions, no other Court, whether the Court of Appeals of Maryland, or this, the highest Court of the land, has any power to correct any error in it. We know for certain that the Court did an exactly similar thing in another case, where it considered that another than the original owner was equitably substituted in the place of the original owner, and that this did not constitute such an assignment as that which the Act of Congress required it to so certify against. It did exactly this in the case of—

Adams, Admr. of Brooks, vs. U. S., 26 Ct. Cl., page 225.

Brooks was an insurance broker who effected insurance with various individual underwriters in his office. But though not a party to these underwritings, he paid the losses and looked to the several underwriters to reimburse him, and took assignments from them some time after these payments. We quote from page 252 of the Court's opinion:

"Mr. Brooks was thus an original loser, and cannot be classed among those who are supposed to have been assignees by purchase for purposes of speculation, if such there be.

"The history of the transaction gave him the right to indemnity as an original loser subrogated to the rights of others, whose obligations he took upon himself."

For the full history of this claim, see—

Cushing et al. vs. U. S., 22 Ct. Cl. 3 and 4.

Therefore, if the Court is to give any effect as evidence to the facts stated in the affidavit of James A. Buchanan, and in the deed of assignment from the firm of S. Smith & Buchanan, to its insolvent trustees, and in the memorial of those trustees, it is bound to accept the effect of what all these persons claimed, viz., that although William B. Buchanan did not enter the firm until after these losses, he entered it under such circumstances, that all the partners of the firm and even the creditors of the firm recognized that he was equitably entitled to the full share of a partner in these claims, inasmuch as he had lost his whole fortune by mingling it with the assets of the firm, and the creditors and other partners had benefited by it. The Court of Claims found, just as in the case of Mr. Brooks, that he was not a purchaser of these claims by speculative assignment, in which case it would have been their duty to exclude him under the terms of the Act, and they expressly certified that he was no such forbidden assignee, but that he was an equitable owner in these claims by estoppel of all parties. It was competent for the Court to make such a decision, if Congress chose to accept it, and it did make such a decision. It has explained the terms upon which it could make such a decision in the Adams case just above quoted. We make one further quotation from its decisions showing that it distinctly recognized such a ground, as the one above suggested, as a proper ground:

"The record title to a vessel is not conclusive in these cases." "The Court may report to Congress facts which may establish an equitable ownership in an adverse party."

Van Wagenen vs. U. S., 25 Ct. Cl., page 110.

In the case before us it found facts which established an equitable ownership in William B. Buchanan, and that his firm, of which he was the surviving partner, and no other, was the owner of the claims in question.

III.

THE COURT OF APPEALS OF MARYLAND FURTHER HOLDS THAT IT IS IN ITS POWER TO CORRECT THE ACT OF CONGRESS WHICH, IN TERMS, AWARDED HIS SHARES AS ONE OF THE PARTNERS IN SAID FIRM, TO THE ADMINISTRATRIX OF WILLIAM B. BUCHANAN, FOR THE BENEFIT OF HIS NEXT OF KIN, BECAUSE, FORSOOTH, SUCH ACT INCORPORATED AND ENACTED A MISTAKE, WHICH, IT SAYS, WAS THE MISTAKE OF THE PARTIES TO THE PROCEEDINGS IN THE COURT OF CLAIMS.

We say again, that nothing but quotations from the opinion of the Court of Appeals could justify us in stating the above to be the position of that Court. Therefore we quote:

"We conclude, therefore, that there is nothing in the finding or certificate of the Court of Claims or in the legislation of Congress which estops the defendants from showing who were the original sufferers, nor from showing that in point of fact William B. Buchanan was not a partner of the firm of S. Smith & Buchanan in 1798, when its property was destroyed and the loss incurred." (Record, page 101.)

And further: "If however, as we hold, the defendants are not estopped by the findings or certificates of the Court of Claims, and if, as we have also held, there is nothing in the Acts of Congress which would prevent the Courts of this State from now correcting the mistake made by those who instituted the proceedings, can there be any doubt that when the plaintiff has come into a Court of Equity asking that the fund may be distributed to those entitled, that the distribution will be made to the real beneficiaries, viz., the next of kin of Samuel Smith and James A. Buchanan?" (Record, pages 101, 102.)

It would seem hardly possible that the Court of Appeals should have failed to perceive its error, if it had added to the words just quoted, "and not any part thereof to the next of kin of William B. Buchanan," to whom Congress expressly

awarded it. But it is only fair to the Court to quote its final words on that subject in the opinion on the second appeal to that Court. (See Record, page 117.)

"In the case here Congress made an appropriation for the benefit of a class, and it was paid over to a trustee whose duty it was to ascertain who were the members of that class within the meaning of the Act of Appropriation. The jurisdiction of our Courts to determine the question as to who are entitled to share in the appropriation grew out of this duty imposed upon the Trustee."

It seems strange that the Maryland Court with this definition of its jurisdiction before it, should have failed to see the limits. It is true, in a sense, that Congress made this appropriation, in the language of the opinion above quoted, for the benefit of "a class." But it made it to a named and ascertained personal representative of a named and ascertained man, for the benefit of an ascertained, designated class, viz., the next of kin of that man, to the extent of his full share as a partner in the firm, to which firm the Act made reference, as it also did to the findings of the Court of Claims, to the effect that the firm consisted of this named and ascertained party, and two other named and ascertained persons. Therefore, the personal representative was trustee, if you so choose to denominate her, for the class whom Congress expressly designated, and, as in the case before quoted, the jurisdiction of the Courts in Maryland was merely to ascertain who were the members of the class whom Congress designated as the recipients of that bounty, and not to determine whether Congress had rightly designated the class or persons to receive its bounty, and to take its bounty altogether from the class designated by Congress and to give it to another class. It is very certain that the person designated by the Court of Claims and the Act of Congress as the administratrix of William B. Buchanan, and the class designated as the next of kin of William B. Buchanan, are not the same as the person designated as the administrator of Samuel Smith and the class designated as the next of kin of Samuel Smith, or the person designated as the administrator

of James A. Buchanan, and the class designated as the next of kin of James A. Buchanan. Therefore, when the Maryland Court of Appeals recognizes that under the cases of Louisville vs. U. S., 169 U. S., and U. S. vs. Jordan, 113 U. S., if a specific appropriation had been made by Act of Congress to a named or ascertained person, or a named and ascertained class, it would be out of their power to divert it to another person and another class, it is strange that they do not recognize, that the person and class are both specifically designated in this Act of Congress, and that they have taken away the fund appropriated altogether from that person and class, and given it to another person or class. They seem to be confused by the fact that the plaintiffs in error here, recognize their duty to share the fund in question with the other partners of the firm designated and described by the Act of Congress and Court of Claims, for the very reason, however, that the designation of William B. Buchanan, as the surviving partner of a firm, necessarily made his administratrix trustee for the other partners and their respective next of kin. But, unless William B. Buchanan were the surviving partner of a firm, of course, his administratrix could not be trustee for the representatives and next of kin of the other partners, or of any one else except her own intestate. Consequently, it is certainly logical to say, that, if William B. Buchanan is decided by the Maryland Court of Appeals not to be a partner with James Buchanan and Samuel Smith, then his administratrix has no relation to those persons and their next of kin at all; but being admittedly the person named in the Act, she must hold the money exclusively for the next of kin of her intestate named and ascertained by the Act, and not for the next of kin of any other person, whom the Court of Appeals of Maryland may decide to flock by themselves exclusively as partners, and to have suffered their own losses in which William B. Buchanan had no share. But it is precisely and only, because her intestate is described as partner with these other members of the firm, that any trust whatever exists for the benefit of the next of kin of the other members of the firm, and consequently the idea

of trusteeship cannot be dissociated from the conception that she is trustee for all the three interests. Certainly she can have no relation of trustee at all to the persons or their descendants who were not members of the firm of which her intestate was a partner and the surviving partner.

IV.

WHEN THE COURT OF APPEALS OF MARYLAND, THEREFORE, CLAIMED THE RIGHT TO CORRECT THE MISTAKE MADE BY CONGRESS AND THE COURT OF CLAIMS IN FAVOR OF THE NEXT OF KIN OF WILLIAM B. BUCHANAN, BY WHOMSOEVER AND HOWSOEVER INDUCED, IT CERTAINLY ANNOUNCED A RULE OF LAW QUITE OPPOSITE TO THE RULE ON THAT SUBJECT SO OFTEN ENUNCIATED BY THIS TRIBUNAL.

A few quotations will save extended argument. We commence with U. S. vs. Price:

"The Acts now under consideration required the Secretary of the Treasury to pay Price the money he got. It was, when the payment was made, and is *now*, the law of the land that he was entitled to that sum from the United States on account of his claim. The Secretary of the Treasury could not refuse to pay it and no authority has been given any one to sue to recover it back. *It may be that Congress required the payment to be made under mistake or that the claim was not a just one.* But until Congress abrogates the law and directs suit to be brought to recover back the money, the conclusive presumption is that there was no mistake, and that Price is under no obligation to pay back what he has received."

U. S. vs. Bem Price, 116 U. S., page 45.

We quote again: "Where Congress have, by confirming the reports of Commissioners or other tribunals, sanctioned the rules and principles on which they were founded, it is a legislative affirmance of the construction put by these tribunals on the laws conferring the authority and prescribing the rules by which it should be exercised, or which is to all intents and purposes of the same effect in law. It is a legislative ratification

of an Act done without previous authority, and this subsequent recognition and adoption is of the same force, as if done by pre-existing power, and relates back to the act done."

U. S. vs. Arredondo, 6 Peters, page 713.

The recent case of U. S. vs. Jordan has been already alluded to. Congress passed an Act making appropriations to refund to certain citizens of Tennessee, named in the Act, the amounts of certain taxes unlawfully collected between certain dates. The Treasury undertook to scrutinize anew the claim of Jordan, on the theory that collections had not been made of him at the dates which made them unlawful. Jordan brought suit for his appropriation in the Court of Claims and recovered judgment from which the Government appealed. Mr. Justice Blatchford, speaking for this Court, said:

"The Court of Claims held that the statute did not admit of that interpretation, nor leave open any question for the Court or for the accounting officers of the Treasury, except the identity of the persons named in it, and that its language, taken together, was too clear to admit of doubt; that Congress undertook, as it had the right to do, to determine not only what particular citizens of Tennessee by name should have relief, but also the exact amount which should be paid to each one of them. We concur in this view."

Did not Congress, in language too clear to admit of doubt, determine the exact amount which should be paid the administratrix of William B. Buchanan, by name, for the benefit of his next of kin, to the full amount of his share as a partner?

U. S. vs. Jordan, 113 U. S., page 422.

An almost identical case with the latter and this present case is the case of—

U. S. vs. Louisville, 169 U. S., 249.
31 Ct. of Cl.

In that case, said Mr. Justice Peckham, speaking for the Court:

"*The Act of 1891 was in the nature of a judgment, final in its character, and subject to no appeal,* and the duties of the officers of the Government, thereafter charged with the payment of the money appropriated by that Act, were not discretionary and were limited to the clerical functions of making payment, as directed by the Act."

See also—Brown vs. Jackson, 7 Wheat. 218–241.

V.

THE CIRCUIT COURT OF BALTIMORE CITY RECOGNIZED CLEARLY THAT THE COURT OF CLAIMS AND CONGRESS MADE THE AWARD TO THE FIRM OF WHICH WM. B. BUCHANAN WAS A PARTNER, AND NOT TO A FIRM IN WHICH HE WAS NO PARTNER, AND THAT THIS COMBINED ACTION WAS A JUDGMENT, WHICH IT HAD NO POWER TO DISTURB.

No better statement of the result of the combined action of the Court of Claims and Congress can be made than is contained in the opinion of Judge Stockbridge of the Supreme Bench of Baltimore City, in deciding this case below, and which is printed with this brief. We quote as follows:

"The money in question is a mere gratuity, nothing more and nothing less: it is true that the findings of the Court of Claims were not a judgment in the sense that the action of that Court is, when passing upon cases, under a jurisdiction differently conferred, and it is perfectly true also that Congress might, or might not, as it saw fit, have accepted the findings of that Court, and by an appropriation provided the necessary money to pay the same, or it might have accepted in part or rejected in part. In order to confer jurisdiction for the entry of a judgment two things are necessary—action by a legislative body, which confers the jurisdiction, and an action of a judicial body in conformity with the jurisdiction conferred. What happened in this case was the jurisdiction conferred to investigate and report; the investigation and report made by the judicial body and then the action of the legislative body making the necessary appropriation to satisfy the findings. While the order is inverted from that which usually obtains, I do not see

how it can be successfully argued that when both the legislative and judicial bodies have acted, each within its appropriate sphere, that the net result of that action is anything less than a judgment. It would have been entirely competent by the joint action of Congress and the Court of Claims to have made an award and appropriation to Mr. George W. Brown, as administrator of James A. Buchanan, the surviving member of one firm of S. Smith & Buchanan, of such amount as it saw fit, or to have awarded the same or a different amount to the complainant as administratrix of the estate of William B. Buchanan, as surviving member of his firm, or to anybody else, etc. But when Congress and the Court of Claims had acted and made the selection of the object for the nation's bounty, it does not seem to me within the purview of a State Court to inquire into, or to divert to a different channel, the gratuity so bestowed. In the most favorable light that the case can be put for the defendant, the Court of Claims was mistaken in the matter of the identity of the two firms of S. Smith & Buchanan, and if the case be one of mistaken identity, it then comes directly under the ruling already previously made in the case of Penniman vs. Hook, in the Circuit Court, and the result would be the same."

We have already quoted from the opinion in the case of Penniman vs. Hook, by Judge Wickes of the Supreme Bench of Baltimore City, printed with this brief as part hereof, and again request comparison with the opinion of the Court of Appeals of our State. In that case an appropriation had been made by the Act of March 3, 1901, on behalf of the next of kin of one Beale Owings, in payment of a French Spoliation Award. The money was collected in the method provided by the Act, by Mrs. Penniman, the administratrix of Beale Owings; she having filed the petitions and conducted the proceedings to fruition. After she had collected the fund and was about to distribute it, the next of kin of another Beale Owings, represented by Hook, claimed the fund, alleging that *their* Beale Owings was the person who had, in fact, been the sufferer of the loss, and hence the fund must be distributed among them, and not among the next of kin of that Beale

Owings to whose administratrix it had been paid. Judge Wickes held that the administratrix had been mentioned by name in the Act, and it did not matter whether her intestate Beale Owings had altogether escaped suffering while the other Beale Owings who lived about that time, suffered greatly. Congress made the gift to the administratrix it named, not to another it did not name.

We quote further from that opinion, which commences with a portion of Mr. Justice Peckham's opinion in the case of—

U. S. vs. Gilliat, 164 U. S., page 42:

"'We think Congress intended, that when such fact had been ascertained by the Court of Claims upon evidence sufficient to satisfy that Court, the fact was to be certified by the Court to the Secretary of the Treasury, and such certificate was to be final and conclusive.'

"So that, whether as in Van Wagenen's case, Congress is to decide the question arising upon facts reported by the Court of Claims, answering questions of conflicting claimants, or sees proper to delegate the power to the Court of Claims, as in the Gilliat case, the result is, that the decision arrived at is 'final and conclusive,' from which no appeal lies, and into the correctness of which no State Court has jurisdiction to inquire. There is no suggestion of fraud or misrepresentation in this case. If a mistake was made, as is alleged, it was an absolutely innocent mistake, for counsel on both sides of this case represented Mrs. Penniman in the prosecution of the claim before Congress. I have not gone into the question of error in the proceeding at Washington, for assuming it all to be true, we have no power to correct it."

(See Appendix.)

Penniman vs. Hook, Circuit Court No 2, Baltimore City.

VI.

THE COURT OF APPEALS OF MARYLAND DECIDED, THAT THERE WERE TWO FIRMS OF SMITH AND BUCHANAN, ONE CONSISTING OF SAMUEL SMITH AND JAMES A. BUCHANAN, AND THE OTHER CONSISTING OF SAMUEL SMITH, JAMES A. BUCHANAN AND WILLIAM B. BUCHANAN, AND THAT THE COURT OF CLAIMS AND CONGRESS BY MISTAKE AWARDED THE FUND IN QUESTION TO THE ADMINISTRATRIX OF THE SURVIVING PARTNER OF THE LAST NAMED FIRM, WHEREAS ITSELF WILL CORRECT THAT MISTAKE AND AWARD IT EXCLUSIVELY TO THE NEXT OF KIN OF THE FIRST NAMED FIRM. WHENCE COMES ITS POWER AND JURISDICTION TO DO THIS?

This is the whole question, and we merely restate it for the purpose of making plain that both the lower Court and the Court of Appeals agreed that the question was the same and that each took opposite sides upon it. We have already quoted the Court of Appeals of Maryland, as follows:

"Indeed, it seems to have been conceded on all hands, and properly so, that she (the administratrix of William B. Buchanan) was the representative of the surviving member of a firm. *But the mistake was* in assuming that her intestate was a member of *the firm* as constituted at *the time* of the losses."

The Court of Appeals then went on to determine for itself that this was a mistake, and that the firm as constituted at the time of the losses and who actually suffered the loss in question, was a different one from the one to which the Court of Claims and Congress made the award. But, as Judge Stockbridge pointed out in the lower Court, they did make the award to the firm of which the plaintiff's intestate was the surviving partner and a member, and in order to have made the award to the firm which the Court of Appeals thought was the right firm, they would have had to make it to George W. Brown, administrator of James A. Buchanan, the surviving partner of the firm that the Court of Appeals thought ought to have received it. As Judge Stockbridge says, George W. Brown, the administrator of the estate of James A. Buchanan, at the time of the prosecution of the claim in the Court of

Claims, appeared in that case by the same counsel who appear here in part for the heirs of Samuel Smith, and received an award in his individual right, and if the Court had decided, upon the evidence before it, that the firm of which his testator and Samuel Smith were the only members, was entitled to the award here in question, he would necessarily have received it, as the administrator of the surviving partner of that firm, instead of its being given to Esther S. Buchanan, the administratrix of the surviving partner of the firm on whose behalf the award was made.

It should be remembered that Miss Esther S. Buchanan appeared for the first time in the proceedings in the Circuit Court of Baltimore City, in the capacity of administratrix *d. b. n., c. t. a.* of James A. Buchanan, after the death of George W. Brown, the former administrator to whom the Court of Claims and Congress made the awards as before mentioned of all that they considered due to that testator. Let us suppose that George W. Brown had been alive at the date of the proceedings in the State Court: Would it have been possible for him to have filed a bill in equity or a cross-bill, claiming for the firm of which his testator was the surving partner, *a gift*, made by Congress to a different person, viz., the firm of which William B. Buchanan was the surviving member?

We have shown, as we believe, that the Court of Claims and Congress adopting its decision, made the award of this fund to one firm rather than the other, for the best of reasons, namely, because they considered that the members of the former firm, and all claiming under them, were estopped from denying that William B. Buchanan had become a member of the firm owning this claim, under such circumstances that his firm might be deemed to have the original ownership of it, and the members of the other firm were estopped from denying the rightfulness of this decision, and that the personal representatives of the members of the other firm, and their counsel, had assented to this view, or this decision, by participating without objection, at least, in the action of the Court, and still later in the action of Congress. For, of course, it is plain

that at any time before the Act of Congress making this appropriation had been passed, it was competent for these claimants, the defendants in error here, to have moved either, or both, the Court of Claims or Congress to make the award to the other firm, if they had then deemed the ownership rightfully there. But they did not do so, and, when the Act of Appropriation became final and the final certificate of the Court of Claims was issued in accordance with that Act, it became too late for these claimants to take away the gift from the parties to whom it was thus given. The designation of the firm entitled to receive it, is not doubted by the Court of Appeals of Maryland, and, if a certain firm was thus sufficiently designated, the award from that date must belong to the next of kin of all the partners of that firm, and there was but one duty left to the probate Court of Maryland, namely, to ascertain who were the next of kin of all three members of that firm, and distribute among them, respectively, the share of each partner.

VII.

THE COURT OF APPEALS OF MARYLAND, HOWEVER, ITSELF ADMITTED THAT THE PROPER TRIBUNAL TO CORRECT THE MISTAKE, IF THERE WAS A MISTAKE, WAS THE COURT OF CLAIMS, PRIOR TO THE FINAL ACTION OF CONGRESS UPON ITS AWARD, AND, IF THAT BE SO, WHAT OTHER TRIBUNAL IS APPOINTED BY LAW TO CORRECT THE ERRORS OR MISTAKES OF THE COURT OF CLAIMS IN THE EXERCISE OF ITS JURISDICTION ON THIS SUBJECT?

It seems strange that the Court of Appeals should have fallen into the error in question, when we consider the following portion of its opinion:

"If the mistake had been called to the attention of the Court of Claims, the proceedings would undoubtedly have been amended, or as in the case of the Clio, 27 Ct. Cl. 221, that Court would have said that, inasmuch as it appeared that the administratrix in fact represented the descendants and next of kin of the original claimants, and that she was prosecuting the claim with their knowledge and at their request, the tech-

nical error of taking out letters of administration on the estate of a subsequent member of the firm, that is, of one who was not a member of the firm when the loss was sustained, 'will not preclude the Court from rendering a decision upon the merits and reporting the case to Congress.' "

But this Court will not surely forget that, if a motion for such amendment, as is suggested, had been made by the representative of the other firm now claiming this award, the representative of the firm that now has received the award, under the action of the Court of Claims and Congress, would have had an opportunity to resist and make defense against such action, and at a period fifteen years nearer the origin of the action than now and when there were still persons living who could have assisted this plaintiff in error in the defense of the rights of her intestate and the rights of his next of kin. This is simple justice, and well illustrates the reason of the rule which prevents the action of the Court of Claims, within its jurisdiction, and the action of Congress, from being collaterally questioned and reviewed after such action has become final and the equivalent of a judgment or, "of the law of the land," to quote the language of the Supreme Court in U. S. vs. Bem Price, before referred to.

See—U. S. vs Arredondo, 6 Pet. 729.
Comstock vs. Crawford, 3 Wall. 403.
Grignon vs. Astor, 2 How. 341.

VIII.

NOT ONLY IS THE ACTION OF CONGRESS, IN MAKING THESE APPROPRIATIONS, FINAL AND CONCLUSIVE, BECAUSE IT IS IN THE NATURE OF A JUDGMENT, OR AN ACT OF JUDGMENT, BUT IT HAS BEEN EXPRESSLY DECIDED BY THIS COURT THAT IT IS PURELY AN ACT OF GRACE OR A GRATUITY, AND FROM THE NATURE OF SUCH AN ACT NO ONE HAS ANY PROPERTY RIGHTS IN THE SUBJECT OF ITS BOUNTY, WHICH HE CAN ASSERT, IN ANY COURT IN EXISTENCE, AGAINST THE DESIGNATED RECIPIENTS OF THAT BOUNTY OR IN ANY WAY CONTRARY TO THE TERMS OF THE ACT MAKING THE GIFT.

As to the nature of these appropriations, the Court has decided, that—

"By the Act of March 3, 1891, payment was only to be made according to the proviso. We think that the payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace and not of right."

See—Blagge vs. Balch, 162 U. S. page 457.

And it is a rule, inherent in the very nature of a gift, that no one should be heard to contend, that there existed an obligation from the donor to the donee, which one who has claims against the donee, either as a creditor or to be substituted in his place, can assert in any Court, or which are transmissible by law or by the aid of a Court from the designated donee to such claimant. The rule is, of course, as old as the idea or notion of a gift. *Cujus est dare ejus est disponere.*

Broom's Legal Maxims (5th Ed. 1870), page 459.

Therefore, when Congress said to the next of kin of Samuel Smith and James A. Buchanan, you may take the share in the fund of your respective ancestors, but you must take it, and share it, with the next of kin of William B. Buchanan, whom the Court has found, and we have designated, to be the survivor of the firm entitled to take it, then these defendants in error could not take it on any other terms, and certainly could not take it on the terms of excluding the descendants of William B. Buchanan from their ancestor's share, thus recognized and given them by Congress.

This principle was announced in the very ancient and much revered case of the full day's laborers in the vineyard against the eleventh hour laborers. Said the donor in that case: "So far as my gift to the eleventh hour laborers was a gratuity, you cannot complain, for as far as my obligation to you went, you have been paid in full, and beyond that, the rest was a gratuity." "Shall I not do what I will with mine own? Is thine eye evil because I am good?" (See Matthew, ch. xx, v. 15.)

There is one element of the gift which has been recognized in the case quoted above, that was first announced in a still more ancient case, namely, that of Jacob vs. Esau, viz., that a gift once made is final, and, even if obtained by fraud, cannot be resumed by any one alleging the fraud on the donor, but only by the donor himself, who even then must bear this rule of logic and justice in his mind, that if it were a gift pure and simple, even a certain sort of fraud does not always justify the donor in resuming it. For in so doing, he must become conscious that he is making doubtful the purity of his gift, that there was a consideration for it, namely, the charm of the fraud itself. We quote from the judgment of Isaac, when the claim was suggested in behalf of Esau, that he should withdraw that dearest of gifts, the blessing that accompanied it, which he bestowed upon Jacob. These are his words:

"I have blessed him and he shall be blessed."

Genesis, ch. xxvii, v. 33.

Apparently Esau had a better notion of the true remedy than our opponents here, when he said: "Hast thou not reserved a blessing for me; hast thou but one blessing my Father?" It would seem that the proper action under the theory of our opponents, that there was a mistake, would be to allow Congress to resume its gift and make the award over again, which we have offered to do.

We have quoted the language of this Court in U. S. vs. Bem Price above, and we quote also the following:

"In England, a bill in equity lies to set aside letters patent obtained from the King by fraud (Attorney-General vs. Vernon, 1 Vern. 277-370; the same case, 2d Ch. Rep. 553), and it would in the United States, *but it is a question exclusively between the sovereignty making the grant and the grantee.*"

Field vs. Seabury, 19 How., page 333.

See also—Nebraska vs. Lockwood, 3 Wall, page 240,, where the above case is approved and applied and the doctrine re-announced.

IX.

THE DEFENDANTS IN ERROR RELY UPON THE CASE OF WILLIAMS VS. HEARD, 140 U. S., KNOWN AS THE CASE OF THE ALABAMA CLAIMS, AS SHOWING THAT A STATE COURT MAY HAVE JURISDICTION TO DETERMINE WHO SHALL BE THE ULTIMATE RECIPIENTS OF THE BOUNTY OF CONGRESS, NOTWITHSTANDING THAT THIS COURT HAS SAID PLAINLY THAT THE ALABAMA CLAIMS, THE SUBJECT OF THAT CASE, DIFFERED FROM THE FRENCH SPOLIATION CLAIMS, THE SUBJECT OF THIS CASE, INASMUCH AS THEY WERE CASES OF APPROPRIATIONS MADE IN SATISFACTION OF OBLIGATIONS AGAINST THE GOVERNMENT, MORAL, OR QUASI LEGAL, OR OF CERTAIN RIGHTS TO SHARE IN THE POSSESSION OF A FUND OF WHICH THE GOVERNMENT WAS TRUSTEE, WHICH CLAIMS OR APPROPRIATIONS WERE DESCENDIBLE AND TRANSMISSIBLE BY LAW TO THE HEIRS OR CREDITORS OF A CLAIMANT, WHEREAS THESE, BEING PURE GRATUITIES, COULD NOT GO TO ANY OTHER RECIPIENTS THAN THOSE PLAINLY DESIGNATED IN THE ACT.

We need only quote from the case of Blagge vs. Balch, 162 U. S., commencing on page 459:

"Manifestly the claims involved in these cases do not come within the rule laid down in Comegys vs. Vasse, 26 U. S., and Wiliams vs. Heard, 140 U. S., and, without intimating any opinion on their merits, the legislation seems to us plainly to place them within that applied in Emerson vs. Hall, 38 U. S., (13th Pet. 409), though the circumstances are not the same."

Says the Court in that case, also (on page 458):

"In Comegys vs. Vasse, 26 U. S., 1st Pet., 193, the United States had stipulated with Spain that they would assume and pay certain claims of their citizens against Spain, and an award was made in favor of Vasse, one of the claimants, by a commission appointed as stipulated to examine and adjudicate the claims. Vasse had in the meantime become bankrupt, and the assignment in bankruptcy was held to carry the claim with it.

"In Williams vs. Heard, 140 U. S., 529, Comegys vs. Vasse, *supra*, was followed, and applied to the awards of the Alabama Claims Commission. The United States had demanded and

received indemnity for losses sustained by their citizens, and had recognized as valid the class of claims to which the particular claim belonged, and had created a Court to adjudicate thereon. It was held that the claim passed to the assignee in bankruptcy, and that payment of awards so made could not be regarded as a mere gratuity.

"In Emerson vs. Hall, 38 U. S., 13th Pet. 409, Chew, the collector, Emerson, the surveyor, and Lorraine, the naval officer, of the port of New Orleans, prosecuted a vessel to condemnation for violation of the laws of the United States prohibiting the slave trade. * * * March 3, 1831 (6 Stat. at L. 464) Congress passed an Act "for the relief of Beverly Chew, the heirs of William Emerson, deceased, and the heirs of Edwin Lorraine, deceased," which directed the portion of the proceeds claimed to be paid over to Chew, "and the legal representatives of the said William Emerson and Edward Lorraine, respectively," and under authority of which the sums which had been adjudged to these officers were paid to them as provided. One of the creditors of Emerson claimed the sum so paid to his legal representatives as assets for the payment of his debts, but it was held that the payment to the heirs was rightfully made, and that the sum could not be considered in their hands as assets for the payment of the debts of their father. Mr. Justice McLean delivering the opinion of the Court said: "A claim having no foundation in law, but depending entirely on the generosity of the government, constitutes no basis for the action of any legal principle. It cannot be assigned. It does not go to the administrator as assets. It does not descend to the heir. And if the government from motives of public policy, or any other considerations, shall think proper, under such circumstances, to make a grant of money to the heirs of the claimant, they receive it as a gift or pure donation. A donation made, it is true, in reference to some meritorious act of their ancestor, but which did not constitute a matter of right against the government."

See—Blagge vs. Balch, 162 U. S. 459.
Emerson vs. Hall, 13 Pet. 413.
Forsythe vs. Reynolds, 15 How. 358.

Could there be any better summation of this rule in applying it to this case here, than in the language of Judge Stockbridge in his opinion before quoted :

"But when Congress and the Court of Claims has acted, and made the selection of the object of the nation's bounty, it does not seem to me within the purview of a State Court to inquire into or divert to a different channel the gratuity so bestowed."

X.

CONGRESS HAS FREQUENTLY IN ITS ACTS APPROPRIATING FOR FRENCH SPOLIATION CLAIMS MADE THE DONATION TO ONE TECHNICALLY AN ASSIGNEE OF THE ORIGINAL SUFFERER, BUT NOT SUCH IN INSOLVENCY OR IN BANKRUPTCY OR FOR PURPOSES OF SPECULATION.

We have quoted the case of Adams, admr. of P. C. Brooks, vs. U. S., where Congress made the appropriation to one who was the assignee of the original sufferer, and who obtained his assignments years after the date of the losses. The Act of March 3, 1899, and the Act of February 18, 1902, making appropriations to pay these claims, contained appropriations to the administrator of Peter Chardon Brooks, as assignee of individual underwriters, under assignments, made to him at various dates, over twenty in number.

The last-named Act also contains an appropriation to Thomas P. Hall, assignee of Thomas Bartlett, in the case of the Ship Galen, John Mackey, Master. This history of this claim appears under the heading.

The Ship Galen, 37 Ct. Cl. 89.

The following were the facts of that case as found by the Court :

"X. In case No. 10, the claimant has proved to the satisfaction of the Court that Thomas Bartlett was a citizen of the United States, and that he, the claimant, is his grandson, and sole surviving executor of his estate, and that by a deed of assignment dated December 14, 1850, he assigned and trans-

ferred his claim to the claimant in consideration of a dollar and of the love and affection which he bore his grandson."

The Ship Galen, 37 Ct. Cl. page 92.

Here is a single one of his descendants designated by the original sufferer to receive his claim, and the Court felt that under the circumstances it was no violation of the intent of the Act of Congress to give the claim to an assignee who was not such for purposes for speculation, but was the one of his blood designated by the original sufferer. Certainly the equity of the assignment so recognized by the Court of Claims and Congress, is not as strong as the equity worked in favor of treating William B. Buchanan and the firm of which he was a member, as substituted in the place of the original firm of which he was not a member, and entitled to share in the bounty of Congress, along with the partners of that firm. It is clear that his two partners considered him so entitled. It is the consideration of just such a case as this that made this Court use the significant language below quoted in describing the unlimited latitude which Congress possessed in determining who were the parties that should be equitably entitled to receive these awards.

"After all it would then go as the original claimants might have desired it, if no special reasons operated to the contrary, and as in frequent instances it would have finally gone, when those reasons, if once existing, ceased to operate."

Blagge vs. Balch, 162 U. S., page 462.

And again on page 463:

"From these considerations and by necessary construction of the language employed, it results that 'next of kin' as used in the proviso means next of kin living at the date of the Act. The Court of Claims must certify that the personal representatives 'represent the next of kin,' and that Court has properly held that before there can be a certificate of that fact it must appear that some next of kin are now in existence. (Hooper vs. United States, 28 Ct. Cl. 480; Durkee vs. United States,

28 Ct. Cl. 326.) *This construction is sustained by the legislation of Congress referred to in Durkee vs. United States, where two instances are mentioned of special Acts giving the fund to other than blood relations of the original sufferers. The exceptions prove the rule.*"

Assuming for the argument that our brothers can correctly designate Samuel Smith and James A. Buchanan as the original claimants, is there any doubt, not as to what they "might have desired," but as to what *they did desire*, with regard to where this award should go, when we read the affidavit of Mr. James A. Buchanan and the deed of trust made by the firm of Smith & Buchanan to Ellicott and Meredith, and the language of the Memorial to the Commissioners of Spanish Claims? Is it not plain that they considered that a partner's interest in these French Spoliation Claims had become the property of William B. Buchanan, whatever was his age at the time of the happening of the loss in question? Can this Court, or any just man, doubt as to what was the desire of the original claimants at the date of those documents, and that they would consider as most inequitable, any other disposition of the claims than the one they recognized?

XI.

The Equality of the Shares of the Partners.

The Court of Claims, in describing the constitution of the partnership, gave no indication that there was any inequality in such shares. None of the evidence before the Court or before the State Courts indicated any inequality, and the Circuit Court No. 2 of Baltimore City, as appears by Judge Stockbridge's opinion, decided that the absence of any evidence tending to show that the agreement of partnership expressed or implied any inequality in shares made it necessary to assume that they were equal, in accordance with the well-known principles of law.

See—Story on Partnerships, sec. 24.
Pomeroy-Smith's Mer. Law, sec. 37, note 102.
Pollock, Digest of Law of Part., (1900), page 75.
Lindley, Law of Part., (1893), page 355.
Fleischman vs. Gottschalk, 70 Md. 523.

The defendants in error have evolved a theory which they twice presented to the Court of Appeals of Maryland, without obtaining recognition of it, that the two elder members of the firm contributed the greater portion of the capital or all the capital, and that William B. Buchanan, the junior member of the firm, contributed little or nothing. The difficulty with this theory is, that there is not an item of evidence in all the Record which shows what amounts of capital, if any, were contributed by either of the two senior members of the firm, though it is a necessary implication from James A. Buchanan's own affidavit, that William B. Buchanan, when admitted into the partnership, contributed and thereby lost his "considerable independent fortune." But it would be impossible for the counsel on the other side who put forward their theory, to name any sum contributed by either Samuel Smith or James A. Buchanan. They assume that Samuel Smith and James A. Buchanan possessed all the capital of the firm, when William B. Buchanan was admitted into the partnership. But what the net amount of that capital was, and whether, after allowing for the debts of the partnership, there was one dollar of surplus assets to go into the scale against William B. Buchanan's considerable independent fortune there is not a jot or tittle of evidence. Even if such surplus of assets over indebtedness was contributed against William B. Buchanan's youth, energy and capacity, we do not know what that capital was, nor is it law that it should be first repaid to the partners, contributing it, unless such was the clear intention of the agreement of partnership. Even if it is not a necessary implication from James A. Buchanan's testimony that his son actually turned over to the firm his considerable independent fortune as part of its assets, such fortune nevertheless became responsible for the firm's debts after the application of the firm's assets. But we have the positive testimony of the deed of trust and of the Memorial of the trustees that these claims belonged to the three partners in their partnership capacity, which expression of the deed of trust has been crisply con-

densed in the finding of the Court of Claims in case No. 381 on page 83 of Record, as follows:

"X.

"November 9, 1820, said Samuel Smith, James A. Buchanan and William B. Buchanan, copartners, and trading as hereinbefore set forth as copartners under the firm name of S. Smith & Buchanan, assigned in trust to Thomas Ellicott and Jonathan Meredith, as trustees, all their real and personal estate belonging to them in the said copartnership capacity of S. Smith & Buchanan."

"V.

"In case No. 381—The firm of S. Smith & Buchanan were the owners of one-half of the vessel and seven-sixteenths of the cargo. The losses of Smith and Buchanan by reason of the capture of the 'Jane' and her cargo, for which they are entitled to indemnity, are as follows. . . . $11,660.22." (Record, page 82.)

In the case No. 2011—The Court of Claims found the same thing with respect to the deed of trust, that the claims embraced in it were owned by the firm in their copartnership capacity, and said on page 78 of Record:

"IV.

"Samuel Smith, James A. Buchanan and William B. Buchanan, citizens of the United States, formed the said firm of S. Smith & Buchanan. The said cotton was worth the sum of $4,100, of which said Donnel and said firm each owned half."

"V.

"The said firm of S. Smith & Buchanan and John Smith, Jr., owned jointly, one-half by said firm and one-half by said John Smith, Jr., the coffee shipped on said 'Patapsco.' Said coffee was worth the sum of $46,012."

This is the record which shows the ownership of the ships and cargo, and there is not one item in it that can lead to the conclusion that the partners of this firm had anything but an equal interest. Under the circumstances, therefore, if the award was made to this firm, as contended by the plaintiffs in error, there can be no question whatever as to the relative shares of the partners.

For these reasons, a reversal of the decree appealed from is prayed.

Respectfully,

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JOHN PEIRCE BRUNS,
Attorneys for Plaintiffs in Error.

SUPPLEMENT A.

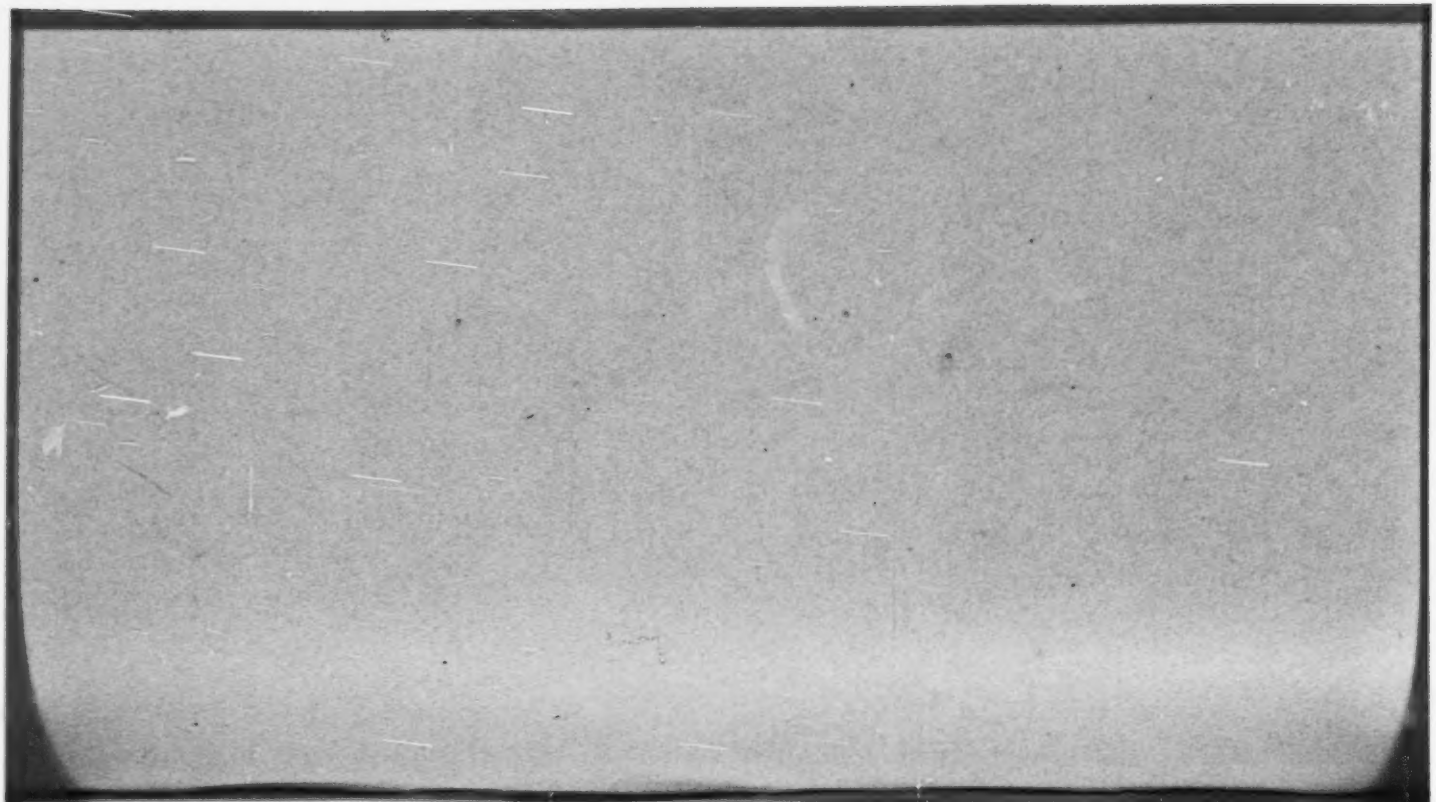
Opinion of Judge Stockbridge in

ESTHER S. BUCHANAN, *Administratrix et al.,* vs. WILSON C. BUCHANAN ET AL.	In the Circuit Court No. 2 of Baltimore City.

SUPPLEMENT B.

Opinion of Judge Wickes in

PENNIMAN ET AL. vs. HOOK ET AL.	In the Circuit Court of Baltimore City.



SUPPLEMENT A.

Opinion of Judge Stockbridge in

ESTHER S. BUCHANAN, *Administratrix et al.,*	In the Circuit Court No. 2
vs.	of
WILSON C. BUCHANAN ET AL.	Baltimore City.

At the hearing of this case the plaintiff filed formal exceptions to evidence, three in number. The first was with regard to the admissibility of a certain letter-book, the offer of which letter-book was withdrawn by the defendants, and it is unnecessary therefore to rule with regard thereto.

The second exception was with regard to certain evidence of Capt. J. Lewis Smith as to the quantum or proportion of the interest of the prospective partners in the firm of "S. Smith & Buchanan." This testimony was manifestly hearsay, and the exception to it is well founded.

The third exception is to the offer in evidence of certain papers, to wit, sundry certificates of enrollment, memorials, etc. These might be offered as evidence for two entirely separate and distinct purposes, for one of which purposes they would be clearly inadmissible, whereas for the other purpose, for reasons which will appear later, they would be entitled to be admitted, and if admissible for any purpose legally, the objection as made is too broad, and it will therefore be overruled.

The complainant in this case is the administratrix *d. b. n.* of William B. Buchanan, and as such administratrix prosecuted before the Court of Claims two certain claims of the class known as French Spoliation Claims, and prosecuted them in virtue of the fact that her decedent was the last surviving member of a firm of "S. Smith & Buchanan." A finding of the Court of Claims was made in her favor

for two amounts, and she was duly certified to the Treasury Department by the Court of Claims, after Congress had made an appropriation based upon those Findings, as representing the next of kin of the original sufferers. The contention in this case is practically one as to who were the original sufferers, and without rehearing at length the various facts, or Acts of Congress, I shall simply state the conclusions at which I had arrived after an examination of all the proceedings, and the various authorities cited by council.

It appears that there were two firms of "S. Smith & Buchanan"—one composed of Samuel Smith and J. A. Buchanan, the other of Samuel Smith, J. A. Buchanan, William B. Buchanan, and with possibly an interest also in a certain John Smith, Jr., though as to this last, his interest as a partner cannot be said to be authoritatively established by proof. Under the Act of 1885 Miss Buchanan presented her claims before the Court of Claims, in virtue of her right as the representative of William B. Buchanan, who was the surviving partner of the firm secondly referred to. The evidence before the Court of Claims in that case showed, as clearly as now appears, the fact of the existence of two firms. The representatives of Samuel Smith and of James A. Buchanan, as well as Miss Esther Buchanan, were before that Court presenting claims for losses growing out of the seizures of one or both of the vessels in question, and in connection with that of the "Patapsco" we find Congress acting upon the conclusions of the Court of Claims, making appropriation to George W. Brown, as administrator of James A. Buchanan; to Robert Carter Smith, as administrator of Samuel Smith; to Virgilia B. Brook, administratrix of John Smith, Jr., as well as to Miss Esther S. Buchanan, the complainant in this case. It is therefore manifest, that in their Findings the Court of Claims was not laboring under any misapprehension of facts, and by those Findings they recommend to Congress the claim represented by Miss Esther S. Buchanan, administratrix of William B. Buchanan, the

surviving member of the firm composed of three. The defendants in this case insist that inasmuch as the Findings of the Court of Claims do not constitute a judgment, it is now competent for them to ask a State Court to review the evidence in the case, and upon that alone, or upon that supplemented by additional evidence, find that the fund that has thus been awarded by Congress is payable to the representative of the last survivor of the firm of Smith & Buchanan, composed only of Samuel Smith and James A. Buchanan, upon the theory that they were the sufferers, and not to the representative of the firm in which William B. Buchanan was a partner. I am unable to take this view. The money in question is a mere gratuity; nothing more and nothing less; it is true that the Findings of the Court of Claims were not a judgment in the sense that the action of that Court is, when passing upon cases, under a jurisdiction differently conferred, and it is perfectly true also that Congress might, or might not, as it saw fit, have accepted the Findings of that Court, and by an appropriation provided the necessary money to pay the same, or it might have accepted in part or rejected in part. In order to confer jurisdiction for the entry of a judgment two things are necessary—action by a legislative body which confers a jurisdiction, and an action of a judical body in conformity with the jurisdiction conferred. What happened in this case, was a jurisdiction conferred to investigate and report; the investigation and report made by the judicial body and then the action of the legislative body making the necessary appropriation to satisfy the finding. While the order is inverted from that which usually obtains, I do not see how it can be successfully argued that when both the legislative and judicial bodies have acted each within its appropriate sphere, that the net result of that action is anything less than a judgment. It would have been entirely competent by the joint action of Congress and the Court of Claims to have made an award and appropriation to Mr.

George W. Brown, as administrator of James A. Buchanan, the surviving member of one firm of Smith & Buchanan, of such amount as it saw fit, or to have awarded the same or a different amount to the complainant as administratrix of the estate of William B. Buchanan, as surviving member of his firm, or to anybody else which they mutually saw fit.

But when Congress and the Court of Claims had acted, and made a selection of the object of the nation's bounty, it does not seem to me within the purview of a State Court to inquire into, or divert to a different channel the gratuity so bestowed. In the most favorable light that the case can be put for the defendants, the Court of Claims was mistaken in the matter of the identity of the two firms of Smith & Buchanan, and if the case be one of mistaken identity, it then comes directly under the ruling already previously made in the case of Penniman vs. Hook, in the Circuit Court, and the result would be the same.

It has been suggested in argument that the interest of the three partners, Samuel Smith, James A. Buchanan and William B. Buchanan, was not equal, but that Samuel Smith enjoyed a half interest in the firm. That it would be entirely competent under the provisions of the Act and under the constructions placed upon it for State Courts to enquire into the terms of a partnership, and the proportional interest of the several partners, seems clear. It is this very class of questions which is included in language such as that used by the Court of Claims and the Supreme Court of the U. S. when it declared that the Court of Claims does not by its Findings assume to specify the ultimate beneficiaries. Just as Congress by its Act recognized that under the statutes of different States there might be a variation among the persons who were to be considered next of kin, and that matter was remitted for determination to the laws of the several States, in like manner, the quantum of interest was a question upon which neither the Court of Claims nor Congress assumed to pass; and it is for this reason that I have admitted in

evidence the certificates of enrollment, memorials, etc., offered upon the part of the defendants. As was said when passing upon that exception to evidence, those documents would be inadmissible in this case if offered for the purpose of establishing who were the original sufferers; but since it is possible that they might at the same time shed some light on the respective rights of the parties *inter sese*, and since that is a matter within the scope of the jurisdiction of the State Court, they are admissible for this purpose. When these are examined, however, they fall far short of affording any substantive proof as to the respective rights of the partners between themselves as partners, certainly not sufficient to overcome the legal presumption of equality, and I am, therefore, constrained to hold that the fund in question is distributable among those persons who were the next of kin of Samuel Smith, James A. Buchanan and William B. Buchanan, living on the 3d day of March, 1899, the day on which the appropriation was made.

There has also been some argument as to the manner of distribution, although that does not appear to be an open question, certainly, in this State. Congress specifically left the designation of the persons to the laws of the several States, which determine by their Statutes of Distribution who were to be regarded as next of kin. While it is true that the money was paid to Miss Buchanan as administratrix, she does not hold it in the strict, technical sense of an administrator, but rather in that of a trustee, and holding it as trustee, no reason is apparent why the distribution should not be made directly by this Court to those persons who are the *cestui que trusts*, namely, the next of kin. Who the next of kin are the statutes of this State abundantly provide, making provision therefor *per stirpes*, and this, as I understand, is directly in accord with previous determinations in this State upon this same question.

A decree will be signed in accordance with the views thus expressed.

SUPPLEMENT B.

Opinion of Judge Wickes in

PENNIMAN ET AL.	In the
vs.	Circuit Court
	of
HOOK ET AL.	Baltimore City.

By the French Spoliation Act of Congress, approved January 20, 1885, it is prescribed that such citizens of the United States or their legal representatives as had valid claims to indemnity upon the French government arising out of the illegal captures * * * prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800, the ratifications of which were exchanged on the 31st day of July following, may apply by petition to the Court of Claims within two years from the passage of this Act, as hereinafter provided:

"Further, it is provided that the Court of Claims shall examine and determine the validity and amount of all the claims included within the description above mentioned, together with their present ownership, and if by an assignee, the date of the assignment, with the consideration paid therefor, and they shall decide upon the validity of said claims according to the Rule of Law, municipal and international, and the Treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as in their judgment may affect liability of the United States therefor," and that "such findings and report of the Court shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimants or Congress, and all claims not finally presented within the period of two years limited by the Act shall be forever debarred."

Many difficulties arise in the construction of the Act as to who were legally and equitably entitled to receive the money which Congress might see fit to appropriate for the payment of these claims, and the Court said in Buchanan vs. United States, 24 Court of Claims, page 81, in reference to the cases which had already been before it: "In none of these cases had the Court assumed to determine who were the next of kin of a deceased claimant, nor whether there are any; nor in what proportions were the several interests of partnership owners; nor whether creditors or descendants have the superior equity; nor whether the children of a bankrupt are entitled to a residue of his estatate; nor whether the receivers of a defunct corporation represents creditors or stockholders; in other words, the Court has not assumed to determine what persons are legally or equitably entitled to receive the money which Congress may hereafter appropriate for the discharge of those claims."

These and other conclusions of the Court having been reported to Congress, appropriations were made to pay certain enumerated claims by Act of 1891, with the following proviso:

"Provided that in all cases where the original sufferers were adjudicated bankrupts, the award shall be made on behalf of the next of kin, instead of to assignees in bankruptcy; and the awards in cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the Court which granted the administrations respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards.

Among other claims presented under the Act of 1885, and within the two years required by the Act, was one on behalf of the estate of a certain Bale or Beal Owings, a

merchant of this city, engaged in maritime ventures at the close of the last century.

Letters of administration were taken out by Mrs. Frances Penniman, a great-niece, for the purpose of presenting this claim, which arose from the seizure of the "Emily" by the French within the period prescribed by the Act.

Bale or Beal Owings died in 1831, leaving a will, but no widow or children. He was a partner in the firm of Rogers & Owings, the owners of the vessel, and an additional claim was made on behalf of his estate for the value of the cargo.

These claims were successfully prosecuted, the Findings of the Court of Claims were reported to Congress, an appropriation made to pay them, the certificate required by the Act of 1891, and all other proceedings necessary to be complied with were taken, and the money paid over to Mrs. Penniman, as the administratrix of Bale or Beal Owings, who died in 1831, to be distributed among the next of kin, as required by the Act of Congress. At this stage of the proceedings she was met by various claimants upon the fund in her hands—

1. By those who supposed they were entitled to take under the will of Bale or Beal Owings.

2. By next of kin, irrespective of his will.

3. By next of kin of a certain Bale or Beal Owings, of Richard, who died in 1802, who it was alleged was the real owner of the cargo in question.

Under these circumstances, Mrs. Penniman has filed this bill for the purpose of distributing the fund in her hands under the direction of the Court.

Since the filing of the bill the Supreme Court of the United States, in Blagge vs. Balch, 162 U. S. 439, has construed the proviso to the Act of 1891 to mean that Congress intended the next of kin to be the beneficiaries in every case, and that the express limitation to the effect excludes creditors, legatees, assignees and all strangers to the blood.

And the Court further said that the words "next of kin," as used in the proviso, mean next of kin living at the date of the Act, to be determined according to the Statute of Distribution of the respective states of the domicile of the original sufferers.

This, of course, eliminates from the case all those who claim under the will of Bale or Beal Owings, to whose administratrix this fund has been awarded, and the only remaining controversy is on behalf of those who claim as the legal representatives of Beal Owings, of Richard, who died in 1802.

No reported case, it is said, deals with a condition so peculiar.

The contention on their behalf is distinctly placed upon the ground that the "Findings of the Court of Claims in this class of cases are not in the nature of judgments and can be collaterally assailed in the State Court where the distribution of the funds is being judicially administered."

And further, were this not so, that "in the case here made out by the bill and answer, parties firstly entitled, if they be parties to the suit, would not be bound by such judgment."

This settled law, that the Findings of the Court of Claims in this class of cases are not judgments by the very terms of the Act of 1885; they are made "advisory" only, and do not conclude either the claimant or the Government. The decisions are numerous to this effect, but this is not all; it is but one step in the chain of procedure. These Findings are reported to Congress, which has power to accept, or reject, or modify them as it sees proper.

In this particular instance, whether the findings of the Court are accepted and acted upon or whether additional proof was required, I am not informed; but certain it is that an Act was passed appropriating money to pay the claim which Mrs. Penniman represented. It is also certain that the Court of Claims subsequently certified to the Sec-

retary of the Treasury that the administratrix represented the next of kin of Bale or Beal Owings, who died in 1831, and had given bond in the probate Court appointing her to distribute this fund among the legal representatives, leaving only to the State Court the determination of the question as to who constituted the next of kin in event of controversy as to the fact. This, and this alone, is the power reserved to the State Courts in this proceeding, and this, I think, is the measure of our jurisdiction.

In Van Wagenen vs. United States, 25 Court of Claims, page 110, in which there was a conflict between the holder of the record title and the equitable, the Court said: "We do not enter judgment in French Spoliation cases, nor determine what persons are entitled to the money which Congress may hereafter appropriate, but will lay before Congress all the facts material to questions which must be decided by that body." So that while the Court of Claims do not enter judgments, and finds only facts to lay before Congress, the action of Congress seems to be final where conflicting claims are presented. More especially is this the case when we remember that these awards stand upon the footing of a gratuity, to which the language of the Supreme Court in Emerson vs. Hale, 13 Peters, 409, especially applies.

A claim having no foundation in law, but depending entirely on the generosity of the Government, constitutes no basis for the action of any legal principle.

It cannot be assigned; it does not go to the administrator; as assets it does not descend to the heir, and if the Government from public policy or any other consideration shall think proper under such circumstances to make a grant of money to the heirs of the claimant, they receive it as a gift or pure donation.

But we are not entirely without authority as to the final and conclusive character of the proceeding at Washington by which Congress donates certain sums of money to the next of kin of those whose property was subjected to spoliation by the French government.

In the case of United States vs. Gilliat, 164 U. S. 42, the claim was made by John A. Brimmer, administrator of John Gilliat, to whom the appropriation was ordered to be paid. He was not able, however, for some reason to comply with the Act of 1891, and Charles Gilliat presented his petition to the Court of Claims for the payment of one-third the amount named in the appropriation, on the ground that he was a grandson of one of the original sufferers, and had been appointed administrator *d. b. n.* of the estate of his grandfather, etc. The Court upon hearing certified to the Secretary of the Treasury for payment to the extent of one-third, etc. Now, the action of the Court of Claims was made under a special Act of Congress of August 23, 1894, in which it was ordered that the money "be paid to the person or persons entitled to receive the same to be ascertained by the Court of Claims upon sufficient evidence and certified to the Secretary of Treasury."

The Court decided that the petitioner was administrator of his grandfather's estate, who was an original sufferer—that he represented the descendants and next of kin and certified to the Secretary of the Treasury for payment to such administrator, etc. The Attorney-General entered an appeal, taking the certificate of the Court of Claims as a judgment.

Mr. Justice Peckham, delivering the opinion of the Court, said: "As the action of the Court of Claims upon the original claim made under the Act of 1885 was not the subject of an appeal to this Court, but was simply advisory in its nature, the whole matter being left to the discretion of Congress, we think it clear that it was not the intention of that body to permit an appeal from the Findings of the Court of Claims upon the subsiduary question as to the particular person or persons to whom the appropriation already made by Congress should be paid. It was undoubtedly the intention of Congress, by the language used in the Act of 1894, to refer to the Court of Claims simply the ascertainment of the proper

person to be paid the sum which it had already acknowledged to be due to the representatives of the original sufferers from the spoliation, and it was not intended that the decision which the Court of Claims might arrive at should be the subject of an appeal to this Court.

"We think that Congress intended that such facts had been ascertained by the Court of Claims upon evidence sufficient to satisfy that Court, the fact was to be certified by the Court to the Secretary of the Treasury, and such certificate was to be final and conclusive."

So that, whether, as in Van Wagenen's case, Congress is to decide the questions arising upon facts reported by the Court of Claims, answering questions of conflicting claimants, or sees proper to delegate the power to the Court of Claims, as in the Gilliat case, the result is that the decision arrived at is "final and conclusive," from which no appeal lies, and into the correctness of which no State Court has jurisdiction to inquire.

There is no suggestion of fraud or misrepresentation in this case. If a mistake was made, as is alleged, it was an absolutely innocent mistake for counsel on both sides of this case represented Mrs. Penniman in the prosecution of the claim before Congress.

I have not gone into the question of error in the proceeding at Washington, for assuming it all to be true, we have no power to correct it. Nor have I referred to the omission of these parties to present their claim within two years allowed by the Act. Forever barred as they are from proceeding in the only way pointed out by the Act of 1885, they are seeking now to avoid the consequences of their own laches, by attempting to reap the benefit of the superior diligence of others.

A decree will be signed in favor of the next of kin represented by Mrs. Penniman.